

# **LAW ENFORCEMENT LIABILITY**<sup>1</sup>

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- I. Federal Civil Rights Act (42 U.S.C. § 1983)
  - A. Must be a “person” (Includes individuals and political sub-divisions)
  - B. Acting Under “color” or authority of “state law”
  - C. Violate a Federal statutory or constitutional right
  - D. Directly Caused actual harm or injury to the Plaintiff
  - E. Must show a “culpable state of mind” (criminal recklessness standard)
  - F. Additional City/County Liability Requirements:
    - 1. Must prove underlying constitutional violation
    - 2. Must show a constitutionally-defective policy or training
    - 3. Defective Policy directly caused constitutionally harm
    - 4. Policymakers acted with “deliberate indifference
- II. Common Federal Claims Against Law Enforcement Officers
  - A. Fourth Amendment
    - 1. False Arrest/search
    - 2. Excessive Force
    - 3. Medical/mental health Treatment
    - 4. Reduced application in Jails
      - a. No right to privacy in prisoner cell

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<sup>1</sup>This outline and the teaching session for which it is prepared is for teaching purposes only and nothing in this outline or the seminar should be construed as legal advice for a specific legal problem.

- b. Random searches
    - c. Visitor Searches
- B. Prisoner First Amendment
  - 1. Religious Freedom (Services, books, diets)
  - 2. Access to news and other information
  - 3. Access to “Pornography” Can be Prohibited
  - 4. Access to Courts and Attorneys
  - 5. Association Rights - Visitation
- C. Jail Discipline of Prisoners
- D. Due Process Liberty and Property Issues
- E. Excessive Force
  - 1. Actual Physical Injury
  - 2. “Malicious and Sadistic” Standard
- F. Failure to Protect
  - 1. Objectively dangerous condition of confinement
  - 2. Deliberate Indifference
- G. Failure to Provide Medical/Mental Health Treatment
  - 1. Serious Medical Problem
    - a. Obvious to a lay person
    - b. Diagnosed as mandating treatment
    - c. Difference of Medical Opinion
    - d. Malpractice and gross negligence insufficient

- e. May rely on County Medical Experts
    - 2. Actual Knowledge of Medical Problem
    - 3. Act with “deliberate indifference”
    - 4. Right to Refuse Treatment
  - H. Conditions of Confinement
  - I. Failure to Train
  - J. Defective Policies
- III. State Law Claims and Utah State Governmental Immunity
- A. Immunity for Civil Rights and Jail Cases
  - B. Notice of Claim
  - C. Fraud or Malice Exception
  - D. Posting Bond If Action Against a Sheriff
- IV. The Prison Litigation Reform Act (PLRA)
- A. Applies to all “prisoner suits”
  - B. Must have a grievance policy
  - C. Limits Attorney Fees
    - 1. Legal Defender Rate Applies
    - 2. Other Federal Law Prohibits “Catalyst” theory
  - D. Limits Emotional Distress Claims
  - E. Limits Injunctive Relief Claims